



Billing Code: 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2011-0724, FRL-9839-2]

Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 and 2006 PM_{2.5} National Ambient Air Quality Standards; Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is partially approving and partially disapproving the State Implementation Plan (SIP) submission from the State of Montana to demonstrate that the SIP meets the infrastructure requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for fine particulate matter (PM_{2.5}) on July 18, 1997 and on October 17, 2006. The CAA requires that each state, after a new or revised NAAQS is promulgated, review their SIPs to ensure that they meet infrastructure requirements. The State of Montana submitted a certification of their infrastructure SIP for the 1997 and 2006 PM_{2.5} NAAQS on February 10, 2010. EPA is acting separately on the portions of the February 10, 2010 submission relating to interstate transport of air pollution.

DATES: This final rule is effective [**FEDERAL REGISTER: insert date 30 days after publication in the Federal Register**].

ADDRESSES: EPA has established a docket for this action under Docket ID No.EPA-R08-OAR-2011-0724. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kathy Ayala, Air Program, U.S.

Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6142, ayala.kathy@epa.gov.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The initials CBI mean or refer to confidential business information.
- (iii) The words or initials Department or DEQ mean or refer to the Department of Environmental Quality.
- (iv) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.

- (v) The initials NAAQS mean or refer to national ambient air quality standards.
- (vi) The initials NSR mean or refer to new source review.
- (vii) The initials PM mean or refer to particulate matter.
- (viii) The initials PM_{2.5} mean or refer to particulate matter with an aerodynamic diameter of less than 2.5 micrometers (fine particulate matter).
- (ix) The initials ppm mean or refer to parts per million.
- (x) The initials PSD mean or refer to Prevention of Significant Deterioration.
- (xi) The initials SIP mean or refer to State Implementation Plan.

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I. Background

Infrastructure requirements for SIPs are provided in sections 110(a)(1) and (2) of the CAA. Section 110(a)(2) lists the specific infrastructure elements that a SIP must contain or satisfy. The elements that are the subject of this action are described in detail in our proposal of May 13, 2013 (78 FR 27891).

On May 13, 2013 (78 FR 27891), EPA published a notice of proposed rulemaking (NPR) to act on a February 10, 2010 infrastructure SIP submission from the State of Montana for the 1997 and 2006 PM_{2.5} NAAQS. The NPR proposed approval of the submission for the following infrastructure elements for the 1997 and 2006 PM_{2.5} NAAQS: CAA Section 110(a)(2)(A), (B),

(C) with respect to the requirement to have a minor NSR program that addresses PM_{2.5}; (E)(i), (E)(iii), (F), (G), (H), (J) with respect to the requirements of CAA sections 121 and 127, (K), (L), and (M). The NPR proposed to disapprove the submissions for the following infrastructure elements for the 1997 and 2006 PM_{2.5} NAAQS: CAA Section 110(a)(2)(E)(ii) concerning requirements for state boards under CAA section 128; and elements (C) and (J) with respect to the requirement to have a PSD program that meets the requirements of part C of Title I of the Act. Finally, the NPR proposed to take no action on the portion of the submission addressing infrastructure element 110(a)(2)(D) for the 1997 and 2006 PM_{2.5} NAAQS, as that portion will be acted on separately.

We proposed to disapprove Montana's February 10, 2010 submission with respect to the requirements of three individual infrastructure elements. The first of these is element 110(a)(2)(E)(ii), relevant to CAA section 128 and state boards. The reasons for this disapproval are detailed within our proposal. In summary, the Montana SIP fails to include provisions which meet the explicit legal requirements of this requirement of the CAA. The second and third elements we proposed to disapprove are provisions required by elements 110(a)(2)(C) and (J), regarding requirements for PSD programs to treat nitrogen oxides as a precursor for ozone as detailed by the ozone phase 2 implementation rule (70 FR 71612). The analysis supporting this action is detailed in our proposal dated May 13, 2013 (78 FR 27891).

Under a Consent Decree that has been entered with a district court, we are required to take final action on this infrastructure SIP no later than July 15, 2013. We note that on June 18, 2013 EPA received revisions to the Montana SIP entitled, "1997 Ozone NAAQS Implementation Rule Updates to Montana State Implementation Plan," which are intended to address the

requirements of elements (C) and (J). That submission will be addressed in a timely manner in a future action. However, the impending consent decree deadline precludes the Agency from postponing this final action.

II. Response to Comments

No comments were received on the 5/13/2013 proposal.

III. Final Action

EPA is approving Montana's February 10, 2010 infrastructure SIP submission for the following infrastructure elements for the 1997 and 2006 PM_{2.5} NAAQS: CAA Section 110(a)(2)(A), (B), (C) with respect to the requirement to have a minor NSR program that addresses PM_{2.5}; (E)(i), (E)(iii), (F), (G), (H), (J) with respect to the requirements of sections 121 and 127, (K), (L), and (M). EPA is disapproving Montana's February 10, 2010 infrastructure SIP submission for the following infrastructure elements for the 1997 and 2006 PM_{2.5} NAAQS: CAA Section 110(a)(2)(E)(ii) concerning requirements for state boards under CAA section 128; and elements (C) and (J) with respect to the requirement to have a PSD program that meets the requirements of part C of Title I of the Act. Finally, EPA is taking no action on Montana's submission for infrastructure element 110(a)(2)(D) for the 1997 and 2006 PM_{2.5} NAAQS as that portion of the submission will be acted on separately.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely

approves state law that meets Federal requirements and disapproves state law that does not meet Federal requirements. This action does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate,

disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the

effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 12, 2013.

Shaun L. McGrath,
Regional Administrator,
Region 8.

40 CFR part 52 is amended to read as follows:

PART 52 [APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart BB - Montana

2. Section 52.1394 is amended by designating the existing paragraph as (a) and adding paragraph (b) to read as follows:

§ 52.1394 Section 110(a)(2) Infrastructure requirements.

* * * * *

(b) On February 10, 2010, Brian Schweitzer, Governor, State of Montana, submitted a certification letter which provides the State of Montana's SIP provisions which meet the requirements of CAA section 110(a)(1) and (2), elements (A), (B), (C) with respect to the requirement to have a minor NSR program that addresses PM_{2.5}; (E)(i), (E)(iii), (F), (G), (H), (J) with respect to the requirements of sections 121 and 127, (K), (L), and (M).